

was not quite sure why it had been convened but got on with its business diligently.

R.J.W. Selleck  
Monash University

**Alvin J. Esau. *The Courts and the Colonies: The Litigation of Hutterite Church Disputes*. Vancouver: UBC Press, 2004. Pp. 400.**

In Canada in 2005 there is clear evidence of a developing debate about the extent to which as a pluralist society we should recognize and encourage particular cultural communities to apply their own internal systems of law, justice, and discipline. The most extensive and articulate challenges to assumptions about homogeneity of political and legal institutions come from First Nations communities. Pressure is also evident, however, among some immigrant communities, most notably among members of the Muslim faith who favour the introduction of sharia law to govern their internal social and familial relations. What we forget and Professor Esau reminds us in *The Courts and the Colonies* is that the existence of minorities seeking to insulate themselves from the values, governance, and law of the dominant community is of long standing in this country. One of the most intriguing examples is provided by the Hutterites, a group of German-speaking religious pacifists and communalists, most of whom came to Canada in the late 1910s after persecution for their pacifism in the United States. As a matter of faith the members of this community have chosen to live their lives apart and insulated, as far as possible, from the state, the dominant culture, and its temptations.

What this erudite and engaging study does is two-fold. In the first place, it demonstrates the strength of the traditional belief system of the Hutterites which requires that they forswear the ways of the world in order to venerate God, follow the teachings of Jesus Christ, and protect their communities from the corrosive values of the state and broader society. Secondly, the author expresses how difficult it has been in more recent decades for certain segments of this faith group to preserve their long-standing beliefs and internal system of government, law, and discipline, and to resist the temptation to resort to the external (Canadian) legal system to resolve their disputes.

It has been a long-standing cardinal precept of Hutterite belief that disputes within the faith community should be resolved by the

invoking of internal mechanisms and not by appeal to the institutions of state law. In one branch of the Hutterite community in North America, the Schmeideleut, this precept has come under stress in recent decades. In part influenced by an association of that Leut with a much more modern and in some ways worldly sect, the Bruderhof, attracted to Hutterite beliefs and practices, and in part by the growth of communal capitalism and its economic success, rancorous disputes have erupted in several colonies. In these conflicts, appeal to Canadian law and its institutions has replaced reference to and trust in communal dispute resolution for some members of these communities. The results have been un-Hutterite, unseemly, and mean-spirited as state power has been invoked by one side or the other to deploy and enforce the prescriptions of the external law.

Traditional Hutterite modes of disciplining those members of the community who are considered to have sinned or erred seriously, especially expulsion, can be harsh and result in the loss by those consigned to exile of any property rights in the assets of colonies to which they will have contributed. They are effectively cast adrift in the world without any resources. As the economic stakes have risen in and between the families and the colonies in which the larger community is organized, so has the tendency for disputes over property to occur. When this has led to a majority seeking to excommunicate and banish a minority, both sides have sometimes looked to the outside law for help to outflank and defeat their opponents.

This book, which reflects the author's long-standing interest in the relationship between the inside law of closed religious communities and outside law of host societies, concentrates on the harrowing details of a dispute in the Schmeideleut colony of Lakeside in Manitoba. Here, a dispute developed between the colony managers associated with a different, rival colony, and a smaller group at Lakeside. The members of the latter felt aggrieved because they claimed that their invention of a mechanical pig feeder had been pirated by the rival colony. When the management group who enjoyed majority support at Lakeside sought to excommunicate and expel their opponents, the dispute festered into a protracted battle as both sides appealed to the province's superior courts, and claims, counter-claims, motions, and counter-motions began to fly. As the courts were engaged judicial orders were secured which the combatants sought to enforce or subvert. The colony, as a consequence, was split in two and life was thereafter conducted at a level of meanness, including violence, into which the external forces of law and order were from time to time drawn.

This dispute, while bad enough, eventually led to disputes in other colonies and to a battle for ascendancy in the Schmeideleut, as deep concerns developed around the conduct of the Senior Minister of that Leut, Jacob Kleinsasser. Kleinsasser was the minister to whom the management group at Lakeside owed allegiance. There was also

evidence that he was involved in dubious financial dealings with shady non-Hutterite interests, and in effect sacrificing his religious and cultural ideals in the cause of wealth creation. Accordingly, what began as a local spat between two colonies evolved into a major ruction in the Leut, as Kleinsasser's authority and position were challenged and his leadership was rejected by over half the associated colonies in Canada and the United States. Two groups emerged, both of which laid claim to the leadership of the Leut and to being the true stewards of the faith. This battle for ascendancy was to cause splits in several other colonies in Manitoba as majorities or minorities identified with the Kleinsasser group or the opposition. There were replays of the rancor at Lakeside as appeals were made by both sides to the external court system. Although with some pressure from the other two Leuts, the Lehrer and the Darius, cooler heads began to prevail and steps were taken to revive the traditional principle of non-engagement with the external legal system, much irreparable damage was done in creating fractured colonies and broken human relationships. Often the only solution was for the losing group in the contending colony to move elsewhere and, if possible, to start a new colony.

Professor Esau traces the various ways in which both American and Canadian courts have addressed the inner tensions of closed religious communities, most notably the Hutterites. He notes that while courts in the United States have tended to hew to a pattern of non-interference, the trend in Canada has been in the opposite direction. He clearly believes that the former approach is preferable and the only way in which religious freedom can be meaningful for such groups. While recognizing that the state has an interest in preventing conduct that offends humanitarian principles and represents the most oppressive forms of anti-social conduct, he counsels deep scepticism over claims that the external law must intervene. To his mind there must be clear evidence of palpable harm being done to individual members of the group for that to happen. The author's position reflects too a more basic concern and that is that in this country the liberal democratic state is shrinking the public space in which religious concerns can be aired and debated, a trend which the Charter of Rights and Freedoms, as interpreted by the courts, has, if anything, been accentuated. In Canada, then, freedom of religion has not prevented the marginalization of religious belief more generally nor the insulation of more radical religion from external intrusion and control.

There is a fundamental question related to the survival of the Hutterite communities that the book does not address. As these stories indicate, these communities continue to prosper economically and prove the point about the viability of communal capitalism as they invest in more effective and efficient modes of agricultural production. Given that reality, can they resist the temptations to interact with the outside world in ways which strike at hallowed traditions of isolation

and autonomy and draw members of the faith into ill-advised collaboration with external financial interests? The road from Lakeland to the schism raises doubts about whether Hutterite tradition and theology are adequate to the task. Moreover, although one has to be careful in extrapolating from other communal cultures, the sad history of the Canadian Doukhobors in preserving and reviving communal ways of working and living points to the weakening of communal values as inner disharmony and outside pressure intensify. The most worrying feature of the stories related in the book is the fracturing of human relations that have occurred within and between the colonies and that appear to endure.

Professor Esau blends painstaking research, inspired story-telling, balanced critique, and shrewd commentary in this book. It represents a major scholarly contribution to our understanding of a traditional community that survived centuries of pressure to comply with majority beliefs, and that survived because of an unshakeable belief in its relationship to God. Moreover, the author adroitly uses the story of tensions within Hutterite colonies to raise important questions about the extent to which the Canadian system of law and justice should interfere in these disputes, and the perils associated with the intrusion of Canadian courts and the machinery of Canadian justice into these matters. As he states in his conclusion, the evidence is undeniable that, for all the maneuvering of the courts in these cases as they sought to find or impose legal solutions, they were singularly ineffective in securing any sort of resolution to the disputes or in restoring peace in the warring colonies. At the level of the constitutional protections that Canadians enjoy the author raises some worrying questions about how committed we are in fact as a political community to freedom of religion. In short, how far do we practice the pluralism that we preach? This is a book that should appeal to those interested in law, history, religious studies, theology, and cultural studies, as well as to the interested and engaged general reader. It deserves a wide readership.

John McLaren  
Lansdowne Professor of Law  
University of Victoria